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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* SUMIT ROY, MICHELE COVELL, JOHN ANKCORN, JOHN  
APOSTOLOPOULOS, MICHAEL HARVILLE, BO SHEN,  
WAI-TIAN TAN, and SUSIE WEE

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Appeal 2010-002260  
Application 10/698,671  
Technology Center 2400

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Before JAMESON LEE, STEPHEN C. SIU, and ROBERT A. CLARKE,  
*Administrative Patent Judges*.

SIU, *Administrative Patent Judge*.

DECISION ON APPEAL  
STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. § 134(a) from the  
Examiner's rejection of claims 1-18 and 26-40. We have jurisdiction under  
35 U.S.C. § 6(b).

The disclosed invention relates generally to delivery of content over a  
network (see, e.g., Spec. 1). Claim 1 reads as follows:

1. A method of servicing content for delivery to a client device, said method comprising:
  - identifying a type of service to be performed on an item of content, wherein said item of content is identified during a session involving said client device;
  - using an estimate of resources associated with performing said service to select a provider from a plurality of providers capable of performing said service; and
  - providing information for transferring said session to said provider, wherein said provider performs said service on said item of content upon being transferred said session.

(App. Br. 25, Claims Appendix.)

The Examiner relies upon the following references as evidence in support of the rejections:

Lai	US 6,407,680 B1	June 18, 2002
Tso	US 6,421,733 B1	Jul. 16, 2002
Richter	US 2003/0046396 A1	Mar. 6, 2003
Agnoli	US 2003/0158913 A1	Aug. 21, 2003
Wu	US 7,171,206 B2	Jan. 30, 2007

The Examiner rejects claims 1-3, 6, 8, 10-12, 14, 16, 18, 33, 34, and 36-39 under 35 U.S.C. § 103(a) as being unpatentable over Agnoli and Wu; claims 4, 5, 15, 26-30, 32, and 35 under 35 U.S.C. § 103(a) as being unpatentable over Agnoli, Wu, and Tso; claims 7, 17, and 40 under 35 U.S.C. § 103(a) as being unpatentable over Agnoli, Wu, and Richter; claims 9 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Agnoli, Wu, and Lai; claim 31 under 35 U.S.C. § 103(a) as being unpatentable over Agnoli, Wu, Tso and Richter; and claims 1, 6-8, 10, 11, 13, 16-18, 26, 30-

33, 36, 37, 39, and 40<sup>1</sup> on the ground of nonstatutory obviousness-type double patenting as unpatentable over claims 1, 4, 8-10, 13, 14, 16, 29, 30, 31-34, 38, 39, and 41 of copending Application no. 10/698,810 in view of Agnoli.

#### ISSUE

Did the Examiner err in rejecting claims 1-18 and 26-40?

#### PRINCIPLE OF LAW

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966).

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007).

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<sup>1</sup> The Examiner states that claims 1, 6-8, 10, 11, 13, 16-19, 23-26, 30-33, 36, 37, 39, and 40 are rejected on the ground of nonstatutory obviousness-type double patenting (Ans. 12). Appellants state that “Claims 19-25 are cancelled” (App. Br. 3). We therefore assume that the Examiner rejects claims 1, 6-8, 10, 11, 13, 16-18, 26, 30-33, 36, 37, 39, and 40 on the ground of nonstatutory obviousness-type double patenting.

## ANALYSIS

### Nonstatutory Obviousness-type double-patenting rejection

As stated above, the Examiner rejects claims 1, 6-8, 10, 11, 13, 16-18, 26, 30-33, 36, 37, 39, and 40 on the ground of nonstatutory obviousness-type double patenting as unpatentable over claims 1, 4, 8-10, 13, 14, 16, 29, 30, 31-34, 38, 39, and 41 of copending Application no. 10/698,810 in view of Agnoli. Appellants do not provide arguments responsive to the Examiner’s rejection. We sustain the Examiner’s rejection because Appellants do not present any argument to demonstrate error in the rejection.

### 35 U.S.C. 103(a)

The Examiner concludes that the invention recited in claim 1 would have been obvious to one of ordinary skill in the art over the combination of Agnoli and Wu. Appellants argue that it would not have been obvious to one of ordinary skill in the art to have combined the Agnoli and Wu references. We agree with the Examiner.

Claim 1 recites identifying a service to be performed, selecting a provider capable of performing the service, and providing information for transferring a session to the provider wherein the provider performs the service. As the Examiner points out and Appellants do not dispute, Agnoli discloses identifying a service to be performed (e.g., a “publishing service request” from a user – see, e.g., ¶ [0091]) and selecting a provider capable of performing the service (e.g., a “determines that the publishing service

request can best be served by an origin server . . . that can provide source media content 355" (¶ [0091])).

In addition, Agnoli discloses that a "media provider request processor" (that receives the publishing service request from the user) "then directs the client's media player to the origin server" (¶ [0091]). In other words, the "media provider request processor" receives a user request for data (in a "session"), determines an "origin server" capable of providing the requested data, then transfers the client's session to the origin server (i.e., "directs the client's media player to the origin server") such that the origin server provides the requested data directly to the user via a "session." Appellants do not provide a sufficient showing that Agnoli's disclosure differs from claim 1.

We also agree with the Examiner that Wu confirms that the level of skill in the art is such that one of ordinary skill in the art would have known that communication sessions may be transferred from one client-destination pairing to another (Wu, Abstract). One of ordinary skill in the art would have understood the practice of transferring sessions between users and servers (Wu) and that a communication session in which a user sends a request for data to a "media provider request processor" and may then be directed to an origin server to obtain the data directly from the origin server (Agnoli – session between the user and the media provider request processor is "transferred" to a session between the user and an origin server).

The combination of Agnoli and Wu would have entailed no more than combining the known elements of establishing sessions between a user and a server in a communication network (Wu and Agnoli) and transferring a session (Wu) to a server capable of providing a desired service (Agnoli and Wu). In addition, the combination would have resulted in the mere predictable result of a user receiving requested information from a server capable of providing the requested information. We agree with the Examiner that such a combination would have been obvious to one of ordinary skill in the art. “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007).

Appellants argue that “there is no motivation to combine the teachings of Agnoli and Wu, because Agnoli teaches away from the suggested modification” (App. Br. 13) since, according to Appellants, “Agnoli specifically discloses that the publishing server farm is for ‘executing the delivery of the desired media content’ . . . and ‘forwards the transcoded media content’” (App. Br. 14).

“‘A reference may be said to teach away when a person of ordinary skill, upon [examining] the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.’” *Para-Ordnance Mfg., Inc. v. SGS Importers Int'l, Inc.* 73 F.3d 1085, 1090 (Fed. Cir. 1995) (quoting *In*

*re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994)). As described above, Agnoli discloses directing a user's request to an origin server such that the origin server provides the requested data directly to the user. Appellants have not demonstrated that Wu discourages one of ordinary skill in the art from following the path set out in the Agnoli reference, namely, from transferring a user to a different component (e.g., "origin server") to provide data directly to the user (i.e., transmitting data to the user over a data "session"). In fact, Wu also discloses transferring a session, which Appellants do not dispute.

Thus, we do not find Appellants' arguments to be persuasive.

Claims 11, 26, 33, and 37 recite similar features as claim 1.

Appellants also argue that:

- 1) "Tso does not provide a suggestion or motivation for combining Agnoli and Wu as suggested" (App. Br. 17 and 21);
- 2) "Richter does not provide a suggestion or motivation for combining Agnoli and Wu as suggested" (App. Br. 18);
- 3) "Lai does not provide a suggestion or motivation for combining Agnoli and Wu as suggested" (App. Br. 20); and
- 4) "Tso and Richter, alone or in combination, do not provide a suggestion or motivation for combining Agnoli and Wu as suggested" (App. Br. 23).

However, we disagree with Appellants' contention that it would not have been obvious to one of ordinary skill in the art to have combined the Agnoli and Wu references for at least the reasons set forth above.

Appellants do not provide additional arguments with respect to the Tso, Richter, or Lai references and do not provide separate arguments in support of claims 2-10, 12-18, 27-32, 34-36, or 38-40.

#### CONCLUSION

We conclude that the Examiner did not err in rejecting claims 1-18 and 26-40.

#### DECISION

We affirm the Examiner's decision rejecting claims 1-18 and 26-40 under 35 U.S.C. § 103 and claims 1, 6-8, 10, 11, 13, 16-19, 23-26, 30-33, 36, 37, 39, and 40 on the ground of nonstatutory obviousness-type double patenting.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

rvb